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IN THE

Supreme Court of the United States

October Term, 1943

No. 288

Swiss National Insurance Company, Ltd., a Corporation of Basle, Switzerland, *Petitioner*,

against

Leo T. Crowley, as Alien Property Custodian, and W. A. Julian, as Treasurer of the United States, *Respondents*.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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INDEX.

	Page
PETITION FOR WRIT OF CERTIORARI	1
A. Summary Statement of the Matter Involved	1
B. Jurisdiction of this Court	4
C. Questions Presented	4
D. Reasons Relied on for the Allowance of the Writ	4
BRIEF	7
Opinion of the Court Below	7
Jurisdiction	7
Statement of the Case	8
Brief of the Argument	10
POINT I—Even if the President's allowance of Petitioner's claim to the return of the profits was erroneous, his decision was final and not subject to judicial review. This contention rests upon the provisions of the Trading with the Enemy Act, read in the light of the general principles applicable to judicial review of executive and administrative action	10
POINT II—The basis of recovery of moneys claimed to be improperly or unlawfully paid is unjust enrichment; and although the return to Petitioner of the profits may have been made without authority of law, Petitioner is fairly entitled to retain the funds in equity and good conscience, inasmuch as beneficial ownership has at all times remained in petitioner	14
CONCLUSION	18

TABLE OF CASES CITED.

Atlantic Coast Line v. Florida, 295 U. S. 301 ..... 5, 14
Badeau v. United States, 130 U. S. 439 5
Butte, A. & P. Ry. v. United States, 290 U. S. 127 ..... 5, 11
Cummings v. Deutsche Bank, 300 U. S. 115 15
Cummings v. Societe Suisse, 66 App. D. C., 121, 85 F. (2d) 287 13
Federal Communications Commission v. Pottsville Broadcasting Co., 309 U. S. 134 11
Great Northern Ry. v. United States, 277 U. S. 172 ... 5, 11
Isenberg v. Biddle, 75 App. D. C. 100, 125 F. (2d) 741 13

Page

Jackson v. Irving Trust Co., 311 U. S. 494 .....5, 13
Paquete Habana, 175 U. S. 677 15
Perkins v. Lukens Steel Co., 310 U. S. 113 .....5, 11
Societe Suisse v. Cummings, 69 App. D. C. 154, 99 F. (2d) 387, cert. denied, 306 U. S. 631 13
Swiss National Insurance Co. v. Miller, 53 App. D. C. 173, 289 Fed. 571, affirmed, 267 U. S. 42 3
United States v. Babcock, 250 U. S. 328 .....5, 11
United States v. Bush & Co., 310 U. S. 371 11
United States v. Morgan, 313 U. S. 409 .....5, 11
United States v. Percheman, 7 Peters, 51 15
United States v. Rodiek, 117 F. (2d) 588, affirmed, 315 U. S. 783 .....5, 12, 13
United States v. Royer, 268 U. S. 394 5
Wisconsin Central R. R. v. United States, 164 U. S. 190 14
Z. & F. Assets Realization Corp. v. Hull, 311 U. S. 470.. 11

STATUTES CITED.

Trading with the Enemy Act, 40 Stat. 411, 50 U. S. C. A., appendix 2

Section 2 2
Section 2(a) 8
Section 5 2
Section 9(a) 8
Section 9(c) 12
Section 9(m) 17
Section 12 12
Section 24(a) 16
Section 25(a)(2) 17
Section 25(e)(2) 17

Settlement of War Claims Act, 45 Stat. 254 3

Section 10 17
Section 14 17

Judicial Code, Section 240(a), 28 U. S. C. 347(a) 7
Public Resolution No. 53, 48 Stat. 1267 17
Act of July 1, 1918, 40 Stat. 646 15
Act of March 4, 1923, 42 Stat. 1516 16

TEXTBOOKS.

Moore, Digest of International Law, Vol. 7, pp. 312-313 15

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against

LEO T. CROWLEY, as ALIEN PROPERTY CUSTODIAN, and W. A. JULIAN, as TREASURER OF THE UNITED STATES, *Respondents.*

PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The petition of SWISS NATIONAL INSURANCE COMPANY, Ltd., a corporation duly organized and existing under the laws of Switzerland, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This is an application by Swiss National Insurance Company, Ltd., for a writ of certiorari to review a final judgment of the United States Court of Appeals for the Dis-

trict of Columbia, entered on the 24th day of May, 1943. The said judgment affirmed the judgment of the District Court of the United States for the District of Columbia, which awarded judgment to the defendants-respondents upon their counterclaim in the amount of $110,580.06, the claim asserted in the bill of complaint having previously been settled by the parties.

Petitioner is a Swiss corporation. In 1910 is established an office in New York for the transaction of fire insurance and reinsurance business in this country. Petitioner was an enemy within the definition contained in Section 2 of the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411, 50 U. S. C. A.—R. 153), since it also did business in Germany. Upon our entry into the war on April 6, 1917, President Wilson issued a proclamation authorizing German insurance companies to continue in business under certain conditions (R. 25-26). Petitioner, although not a German corporation, apparently considered itself among those benefited by this Proclamation and it continued to do business without restriction for a number of months. On November 27, 1917, the Secretary of the Treasury, acting pursuant to Section 5 of the Trading with the Enemy Act, issued to petitioner a license authorizing continuance of its insurance business under certain specified conditions (R. 59-60). Pursuant to this and a subsequent superseding license issued October 6, 1918 (R. 60-63), petitioner continued its business until November 15, 1918, when the license was revoked (R. 63-64), together with all licenses previously issued to other enemy insurance companies. Shortly thereafter petitioner's assets in the United States were taken over by the Alien Property Custodian.

On January 6, 1922, petitioner commenced an action in the Supreme Court of the District of Columbia to recover the properties seized by the Custodian, asserting that it was no longer an enemy because the war had ended and it had ceased doing business in Germany and that the Act of

June 5, 1920, 41 Stat. 977, amending the Trading with the Enemy Act, entitled it to the return of its assets. The trial court dismissed the complaint and the Court of Appeals and this Court affirmed. *Swiss National Insurance Co.* v. *Miller,* 53 App. D. C. 173, 289 Fed. 571, affirmed, 267 U. S. 42.

On March 3, 1924, before the decision of this Court cited above, petitioner filed a claim, under Section 9 of the Trading with the Enemy Act, for the return of all profits earned by it from April 6, 1917 to November 15, 1918, when its license was revoked. On June 15, 1925, President Coolidge, pursuant to the opinion of Attorney General Sargent (R. 67-72), allowed the claim. Thereafter the sum of $419,-230.97 was returned to petitioner as profits earned during the license period and as interest or earnings realized by the Alien Property Custodian during his retention of the funds.

In 1930, pursuant to the Settlement of War Claims Act of 1928, 45 Stat. 254, a sum claimed to be 80 per cent of petitioner's assest remaining in the United States Government's possession was returned to the company. The present action was instituted by petitioner for an accounting as to certain reservations for taxes and other purposes which had been set up by the Government officials in arriving at the amount to be returned to petitioner under the Settlement of War Claims Act. The defendants named in the bill (R. 2-7) pleaded a counterclaim (R. 12-25) which sought recovery of 20 per cent of the amount paid to petitioner in 1926 as profits earned during the license period—April 6, 1917, to November 18, 1918—the defendant's contention being that the return of the profits was without authority of law.

After settlement by the parties of the claim asserted in the bill of complaint, the trial court awarded judgment for respondents on their counterclaim, holding that the President acted under a mistake of law in returning the profits to petitioner and that the United States was entitled to re-

covery thereof. The Court of Appeals affirmed with an opinion (R. 185-188) in which it discusses and rejects the contentions advanced by petitioner.

B.

JURISDICTION OF THIS COURT.

Section 240 (a) of the Judicial Code, 28 U. S. C. § 347(a), confers upon this Court jurisdiction to review by certiorari judgments of the United States Court of Appeals for the District of Columbia.

The judgment of which petitioner seeks review was entered on May 24, 1943 (R. 189).

C.

QUESTIONS PRESENTED.

(1) Whether the decision of President Coolidge, dated June 15, 1925, allowing petitioner's claim for the return of profits earned by it from April 6, 1917, to November 18, 1918, is subject to judicial review in the present proceeding; and

(2) Whether respondents are entitled, under the circumstances of this case, to recover funds which originally belonged to petitioner, were later sequestered by the Alien Property Custodian, and were finally restored to petitioner pursuant to the President's order of June 15, 1925.

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

(1) The Court below, in denying finality to a Presidential determination made pursuant to Section 9(a) of the Trading with the Enemy Act, erroneously decided a question of substance relating to the construction or application of a statute of the United States which has not been, but should

be, settled by this Court. This question, among others, was presented in *United States* v. *Rodiek,* 117 F. (2d) 588, in which this Court granted certiorari, 314 U. S. 597, and affirmed the judgment, without opinion, the Court being equally divided 315 U. S. 783. In that case the Circuit Court of Appeals for the Second Circuit discussed the question at some length but failed to decide it, holding that the claimant had reopened the whole matter by attempting to obtain an additional allowance by way of private bill in the Senate.

(2) The Court below, in holding that the action of the President in allowing a claim for the return of property seized by the Alien Property Custodian is subject to judicial review, failed to give proper effect to certain decisions of this Court believed by petitioner to be applicable herein. Petitioner refers to the following decisions, among others:

Great Northern Ry. v. *United States,* 277 U. S. 172;
Butte, A. & P. Ry. v. *United States,* 290 U. S. 127;
Jackson v. *Irving Trust Co.,* 311 U. S. 494;
United States v. *Morgan,* 313 U. S. 409;
Perkins v. *Lukens Steel Co.,* 310 U. S. 113;
United States v. *Babcock,* 250 U. S. 328.

(3) In holding that respondents were entitled to the return of the funds restored to petitioner under the Presidential order of June 15, 1925, the Court below failed to give effect to the principle that the suit for restitution, upon which respondents counterclaim was based, is equitable in nature and will lie only where the person against whom relief is sought has been unjustly enriched. This principle has been applied by this Court in many cases, including the following:

Atlantic Coast Line v. *Florida,* 295 U. S. 301;
Badeau v. *United States,* 130 U. S. 439;
United States v. *Royer,* 268 U. S. 394.

WHEREFORE, petitioner prays that a writ of certiorari be issued out of and under the seal of this Court, directed to

the United States Court of Appeals for the District of Columbia, commanding it to certify and send to this Court for review and determination a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8398, Swiss National Insurance Company, Ltd., a corporation of *Basle, Switzerland, Appellant* v. *Leo T. Crowley,* as Alien Property Custodian, and W. A. Julian, as Treasurer of the United States, Appellees, and that the said judgment may be reversed by this Court, and that petitioner may have such other and further relief as to this Court may seem proper.

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Petitioner,

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